

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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| NICHOLE L. SHINGLER, |) | CASE NO. 5:08 CV 727 |
| |) | |
| Plaintiff, |) | JUDGE DONALD C. NUGENT |
| |) | |
| v. |) | |
| |) | |
| COMMISSIONER OF SOCIAL |) | MEMORANDUM OPINION |
| SECURITY, |) | AND ORDER |
| |) | |
| Defendant. |) | |

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Nancy A. Vecchiarelli. The Report and Recommendation (ECF # 14) is hereby ADOPTED by this Court.

Procedural and Factual Background

Plaintiff, Nichole Shingler, filed an application with the Social Security Administration for disability insurance benefits, alleging disability since February 1, 2004, due to reflex sympathetic dystrophy, carpal tunnel syndrome, and depression. Plaintiff filed this application on April 30, 2004.

Plaintiff's application for benefits was denied by an administrative law judge (ALJ) on June 8, 2007. The ALJ's decision became final upon denial of review by the Appeals Council in January 2008.

On March 24, 2008, Plaintiff filed a timely Complaint with this Court pursuant to 42 U.S.C. § 405(g), seeking judicial review of Defendant's denial of Plaintiff's application for disability benefits. Pursuant to Local Rule 72.2, this matter was referred to Magistrate Judge Vecchiarelli for the preparation of a report and recommendation.

In her Report and Recommendation, Magistrate Judge Vecchiarelli concluded that the ALJ's determination that Plaintiff was not disabled and, therefore, not entitled to disability benefits, was supported by substantial evidence. Accordingly, the Magistrate Judge recommended that Defendant's decision denying benefits to Plaintiff should be affirmed. Plaintiff filed Objections to the Report and Recommendation on November 19, 2008. (ECF # 15.) Defendant has not filed a response to Plaintiff's Objections. This Court herein reviews the Report and Recommendation, and Plaintiff's Objections.

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable district court standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case de novo. FED. R. CIV. P. 72(b) provides this standard of review. It states, in pertinent part, the following:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Accordingly, this Court will review the Report and Recommendation, to which timely objections have been filed, de novo. *See Ivy v. Secretary of Health and Human Servs.*, 976 F.2d 288, 289-90 (6th Cir. 1992).

It is important to note that the standard of review for a magistrate judge's report and recommendation is distinct from the standard of review for the Commissioner of Social

Security's decision regarding benefits. Judicial review of the Commissioner's decision, as reflected in the decisions of the ALJ and the Appeals Council, is limited to whether that decision is supported by substantial evidence. *See Smith v. Secretary of Health and Human Servs.*, 893 F.2d 106, 108 (6th Cir. 1989). "Substantial evidence exists when a reasonable mind could accept the evidence as adequate to support the challenged conclusion, even if that evidence could support a decision the other way." *Casey v. Secretary of Health and Human Servs.*, 987 F.2d 1230, 1233 (6th Cir. 1993) (citation omitted).

Conclusion

This Court has reviewed the Report and Recommendation of this case de novo and has considered all of the pleadings, transcripts, affidavits, motions, and filings of the parties. Further, this Court has reviewed the ALJ's findings in Plaintiff's administrative proceedings and the Appeals Council's decision under the substantial evidence standard. After careful evaluation of the record, the Report and Recommendation, and Plaintiff's Objections, this Court adopts the findings of fact and conclusions of law of the Magistrate Judge as its own.

In her Objections to the Report and Recommendation, Plaintiff asserts the following:

1. The Magistrate Judge improperly found that the ALJ gave proper weight to the opinions of Claimant's treating physician in determining Claimant's residual functional capacity.
2. The Magistrate Judge erred in failing to find Ms. Shingler disabled or remand the case for further proceedings because the evidence on file shows that Ms. Shingler is disabled and unable to perform substantial gainful activity.

(ECF # 15 at 1-6.) For these reasons, Plaintiff requests that the Court find her disabled and unable to perform even sedentary work and pay her Supplemental Security Income from February 1, 2004, and continuing. (*Id.* at 7.) In the alternative, Plaintiff requests that this Court

reverse the decision of the ALJ and remand for a rehearing. (*Id.*)

A review of the Report and Recommendation demonstrates that the Magistrate Judge adequately considered and appropriately resolved each of the issues raised by Plaintiff. With respect to the first assignment of error, whether the ALJ gave proper weight to the opinions of Plaintiff's treating physician, the Magistrate Judge carefully reviewed the record evidence and determined that the ALJ gave specific reasons for rejecting Dr. Perkowki's opinion. This Court has likewise reviewed the record evidence and finds that the Magistrate Judge properly found that the ALJ satisfied the requirement that he give specific reasons for rejecting Dr. Perkowki's opinion. Hence, to the extent that Plaintiff objects to the Report and Recommendation on this basis, the objection is OVERRULED.

Similarly, as to the second assignment of error, whether the Magistrate Judge erred in failing to find Ms. Shingler disabled or remand the case for further proceedings, the Court finds Plaintiff's argument to be without merit. The Magistrate Judge carefully reviewed the record evidence and found that the ALJ's decision that Plaintiff was not disabled was supported by substantial evidence. After conducting a de novo review in this case, this Court likewise finds that the determination of "not disabled" was supported by substantial evidence. Accordingly, to the extent that Plaintiff objects to the Report and Recommendation on this basis, the objection is OVERRULED.

For the foregoing reasons, the Report and Recommendation of Magistrate Judge Nancy A. Vecchiarelli (ECF # 14) is hereby ADOPTED, and Plaintiff's Objections to the Report and Recommendation (ECF # 15) are OVERRULED.

Consistent with this ruling, Defendant's final decision is AFFIRMED and judgment is

entered in favor of Defendant.

IT IS SO ORDERED.



DONALD C. NUGENT
United States District Judge

DATED: December 9, 2008